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CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: 2022-CV-000315



Court: Shawnee County District Court
Case Number: 2022-CV-000315
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. Pfizer Inc
Type: Consent Order and Final Judgment

SO ORDERED.

A handwritten signature in black ink, appearing to read "T. Watson", is written over a large, stylized circular flourish.

/s/ Honorable Teresa L Watson, District Court Judge

Christopher Teters
Assistant Attorney General
Office of the Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612-1597
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**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
THIRD JUDICIAL DISTRICT**

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General)
)
Plaintiff,)
)
v.)
)
PFIZER INC.,)
)
Defendant.)

CONSENT ORDER AND FINAL JUDGMENT ORDER

Plaintiff, the State of Kansas (“Plaintiff” or “State”) has filed a Complaint for a permanent injunction and other relief in this matter pursuant to K.S.A. 50-623 *et seq.* The State alleges that Defendant Pfizer Inc. (“Defendant” or “Pfizer”) (collectively “Parties”) committed violations of the Kansas Consumer Protection Act (“KCPA”). Plaintiff, by its counsel, and Defendant, by its counsel, have agreed to the entry of this Consent Order and Final Judgment (“Judgment”) by the Court without trial or adjudication of any issue of fact or law. Pfizer is entering into this Judgment solely for the purpose of settlement and expressly denies violating the KCPA, or any other law, rule, or regulation and further denies any other liability or wrongdoing.

IT IS HEREBY ORDERED THAT:

I. FINDINGS

1. For purposes of this proceeding only, this Court has jurisdiction over the subject matter of this lawsuit and over all Parties. This judgment shall not be construed or used as a waiver of any jurisdictional defense Pfizer may raise in any other proceeding.

2. The terms of this Judgment shall be governed by the laws of the State of Kansas.

3. Entry of this Judgment is in the public interest and reflects a negotiated agreement among the Parties.

4. The Parties have agreed to resolve the issues resulting from the Covered Conduct (defined below) by entering into this Judgment.

5. While Pfizer does not admit any violations of the KCPA and does not admit any wrongdoing, Pfizer is willing to enter into this Judgment regarding the Covered Conduct in order to resolve the concerns of the Kansas Attorney General (“Attorney General”), under the KCPA as to the matters addressed in this Judgment and thereby avoid significant expense, inconvenience, and uncertainty.

6. Pfizer is entering into this Judgment solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Pfizer expressly denies. Pfizer does not admit any violation of the KCPA and does not admit any wrongdoing that was or could have been alleged by any Attorney General before the date of the Judgment under those laws. No part of this Judgment, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Pfizer. This document and its contents are not intended for use by any third party for any purpose.

7. This Judgment shall not be construed or used as a waiver or limitation of any defense otherwise available to Pfizer in any other action, or of Pfizer's right to defend itself from, or make any arguments in, any other private individual, regulatory, governmental, or class claims or suits relating to the subject matter or terms of this Judgment. This Judgment is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. Notwithstanding the foregoing, the State may file an action to enforce the terms of this Judgment.

8. No part of this Judgment shall create a private cause of action or confer any right to any third party for violation of any federal or state statute except that the State may file an action to enforce the terms of this Judgment. It is the intent of the Parties that this Judgment shall not be binding or admissible in any other matter, including, but not limited to, any investigation or litigation, other than in connection with the enforcement of this Judgment.

9. All obligations undertaken by Pfizer in this Judgment shall apply prospectively.

II. DEFINITIONS

The following definitions shall be used in construing the Judgment:

10. "Clearly and Conspicuously" or "clear and conspicuous" shall mean that the statement, representation or term being disclosed is of such size, color, contrast and/or audibility and is presented so as to be readily noticed and understood by the consumer to whom it is disclosed. In addition to the foregoing, with regard to interactive media, the disclosure shall also be unavoidable (i.e., no click-through required to access it), and shall be presented prior to the consumer incurring any financial obligation.

11. "Consumer" shall mean a consumer located within the State of Kansas who utilized a Copayment Coupon during the Covered Conduct period, as defined herein.

12. "Copayment Coupons" or "Coupons" shall mean the drug coupons offered by Pfizer to assist eligible Consumers with some of their out-of-pocket costs associated with

purchasing Estring®, Quillivant®, or Flector Patch® from at least 2014 through 2018. Many of these Coupons set forth that eligible consumers who are commercially insured or uninsured would “PAY NO MORE THAN” certain amounts out-of-pocket, subject to certain terms and conditions.¹

13. “Covered Conduct” shall mean Pfizer’s offer of Copayment Coupons to eligible Consumers who were prescribed Estring®, Quillivant®, and Flector Patch® from at least 2014 through 2018, which was the subject of an investigation by the State pursuant to Kansas’ Consumer Protection Act, K.S.A. 50-623 *et seq.*

14. “Effective Date” shall mean the date on which a copy of the Judgment, duly executed by Pfizer and by the Signatory Attorney General, is approved by, and becomes a Judgment of the Court.

15. “Health Care Provider” or “HCP” shall mean any physician or other health care practitioner, who is licensed to provide health care services or to prescribe pharmaceutical products.

16. “Internet Coupons” shall mean Pfizer’s Copayment Coupons that were downloaded and/or printed from consumer websites that Pfizer maintained during the Covered Conduct period.

17. “Parties” shall mean Pfizer as defined herein and the Signatory Attorney General.

18. “Pfizer” shall mean Pfizer, Inc., and its United States-based affiliates, subsidiaries, predecessors, successors, and assigns.

19. “Plastic Coupons” shall mean wallet-size plastic coupons cards provided to Consumers or a Health Care Provider.

20. “Signatory Attorney General” shall mean the Attorney General of Kansas or his authorized designee, who has agreed to this Judgment.

¹ Pfizer’s Copayment Coupons are not valid for prescriptions that are eligible to be reimbursed, in whole or in part by Medicaid, Medicare, Tricare, or other federal or state healthcare programs.

III. BACKGROUND

21. During the Covered Conduct period, Pfizer sold Estring® (which treats moderate to severe symptoms of vulvar and vaginal atrophy due to menopause by releasing local estrogen therapy via a vaginal ring); Quillivant® XR and Quillichew ER® (which treat attention deficit hyperactivity disorder via a liquid formulation and chewable tablet, respectively) (Quillivant® XR and Quillichew ER® are referred to collectively herein as “Quillivant®”)²; and Flector Patch® (a prescription NSAID patch that treats acute pain due to minor strains, sprains, and bruises).

22. Pfizer occasionally offers copayment coupons to assist patients with some of their out-of-pocket costs associated with accessing certain important medicines. From at least 2014 - 2018, Pfizer made Copayment Coupons for Estring®, Quillivant®, and Flector Patch® available to Kansas Consumers. Many of those Copayment Coupons set forth that eligible Consumers would “PAY NO MORE THAN” a certain amount out-of-pocket, subject to certain “terms and conditions.” Although the Co-payment Coupons included terms and conditions describing the maximum potential savings and the possibility that out-of-pocket expenses could exceed the “PAY NO MORE THAN” amount listed on the face of the Copayment Coupon, Plaintiff has taken the position that these terms and conditions were not disclosed Clearly and Conspicuously.

23. In general, Kansas Consumers accessed Pfizer’s Copayment Coupons in two ways. First, these Consumers could have received wallet-size Plastic Coupon cards from their Health Care Providers. Second, these Consumers could have downloaded and printed paper Internet Coupons from consumer websites that Pfizer maintained. The Plastic Coupons and Internet Coupons both advertised the same offer; however, the Internet Coupons presented the terms and conditions differently than the Plastic Coupons.

² Pfizer stopped selling Quillivant® in 2017.

24. While many Kansas Consumers paid less than or equal to the “PAY NO MORE THAN” amount that appeared on the relevant Pfizer Copayment Coupons, over a thousand Kansas Consumers paid more than the “PAY NO MORE THAN” amount indicated on the Copayment Coupons.

25. In early 2018, Pfizer began changing the text of the “PAY NO MORE THAN” Copayment Coupons to say that patients could “PAY AS LITTLE AS” the listed amount.

IV. INJUNCTIVE RELIEF

A. Compliance

26. Pfizer’s advertising, marketing and business practices concerning Copayment Coupons shall comply fully with Kansas’ Consumer Protection Act, K.S.A. 50-623 *et seq.*, and all other applicable laws.

B. Advertising and Marketing Practices

27. Pfizer shall, as of the Effective Date, cease disseminating any printed materials including Copayment Coupons themselves, which include the “PAY NO MORE THAN” language where the terms and conditions reveal that some consumers may pay more than the stated amount.

28. Pfizer shall disclose in its marketing materials, online and in print, Clearly and Conspicuously:

- a. The maximum savings associated with its Copayment Coupons. Such disclosures shall be made contemporaneously with the claim that they are intended to qualify; and
- b. A toll-free number for customer service regarding the offer, eligibility requirements, and terms and conditions associated with Pfizer’s Copayment Coupons.

V. MONETARY TERMS

29. Pfizer shall pay a total of **\$115,564.01** to the Attorney General of the State of Kansas, a portion of which shall be refunded and payable by Pfizer to Kansas consumers.

30. Within thirty (30) days of receiving approval from the Court, Pfizer shall send an initial payment to the Kansas Attorney General of **\$30,000.00**. The Kansas Attorney General shall use these funds solely for enforcing and implementing the consumer protection laws of the State of Kansas that are within the jurisdiction of the Kansas Attorney General.

31. The amount to be refunded and payable by Pfizer to Consumers, under this Consent Judgment, is **\$85,564.01**. Pfizer shall pay restitution to Kansas Consumers based on the first time each of those Consumers utilized a Copayment Coupon for Estring®, Quillivant®, and Flector Patch® during the Covered Conduct period and paid more out-of-pocket than the “PAY NO MORE THAN” amount listed on their Coupon. Pfizer shall pay those Kansas Consumers as follows:

- a. A Consumer who utilized a Plastic Coupon and paid his or her pharmacy an amount exceeding the “PAY NO MORE THAN” amount listed on his or her Copayment Coupon shall receive a restitution payment equal to 100% of his or her first-time payment in excess of the “PAY NO MORE THAN” amount.³
- b. A Consumer who utilized an Internet Coupon and paid his or her pharmacy an amount exceeding the “PAY NO MORE THAN” amount listed on his or her

³ For example, if a Consumer paid \$20 at the pharmacy counter when utilizing an Estring Plastic Coupon that stated “Pay No More Than \$15” (subject to terms and conditions), that Consumer would receive \$5 in restitution under this Judgment.

Copayment Coupon shall receive a restitution payment equal to 25% of his or her first-time payment in excess of the “PAY NO MORE THAN” amount.⁴

- c. If a Consumer utilized both Plastic and Internet Coupons during the Covered Conduct period, or used the same type of Coupon more than once during the Covered Conduct period, he or she will receive a restitution payment tied to the first time that Consumer paid his or her pharmacy an amount in excess of the “PAY NO MORE THAN” amount listed on his or her Copayment Coupon. No Consumer is entitled to more than one restitution payment per medicine under this Judgment.

32. Within thirty (30) days of the Effective Date, Pfizer shall provide to the State a list containing (a) the available names and addresses of Kansas Consumers who are entitled to a restitution payment under this Judgment; (b) the amounts to which those Consumers are entitled; and (c) whether those Consumers used a Plastic Coupon or Internet Coupon for the transaction at issue (the “Restitution List”).

33. Within fourteen (14) days of the date on which Pfizer provides the Restitution List, the State shall notify Pfizer that (i) it approves the Restitution List; or (ii) that the State has found an error or discrepancies in the Restitution List. Both parties shall work in good faith to resolve and or correct any discrepancies in the Restitution List.

34. Within ninety (90) days of finalizing the Restitution List, Pfizer, or its vendor, will issue restitution payments by check according to the Restitution List. These Restitution payments will be accompanied by a letter to the Consumer that is substantially similar to the form attached

⁴ For example, if a Consumer paid \$20 at the pharmacy counter when utilizing an Estring Internet Coupon that stated “Pay No More than \$15” (subject to terms and conditions), that Consumer would receive \$1.25 in restitution under this Judgment.

as **Exhibit A**. Once sent, these payments will constitute a full refund to all Consumers identified on the Restitution List as specified and associated with the Covered Conduct.

35. Within one hundred eighty (180) days of issuing the restitution payments described in Paragraph 34, Pfizer, or its vendor, will cancel all undeposited checks issued to Consumers on the Restitution List.

36. Within two hundred ten (210) days of issuing the restitution payments described in Paragraph 34, Pfizer will submit a report to the Attorney General providing a full accounting of all restitution paid to Kansas Consumers pursuant to this Judgment. Pfizer will then send the balance of the Restitution Amount, if any, to the Kansas Attorney General's Office.

37. The Kansas Attorney General shall use the balance solely for enforcing and implementing the consumer protection laws of the State of Kansas that are within the jurisdiction of the Kansas Attorney General.

38. Payments to the State of Kansas under the preceding paragraph shall be in the form of a certified check, cashier's check, or money order made payable to the State of Kansas, shall reference "Pfizer Co-Payment Coupons," and shall be delivered to:

Christopher Teters
Assistant Attorney General
Office of the Attorney General
Derek Schmidt
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612-1597
Phone: (785) 296-3751
Fax: (785) 296-6296

VI. ENFORCEMENT

39. For the purposes of resolving disputes with respect to compliance with this Judgment, should the State have a reasonable basis to believe that Pfizer has engaged in a practices that violates a provision of this Judgment subsequent to the Effective Date, then the State shall

notify Pfizer in writing of the specific objection, identify with particularity the provision of this Judgment that the practice appears to violate and give Pfizer thirty (30) days to respond to the notification; provided, however, that the State may take any action if the State believes that, because of the specific practices, a threat to the health or safety of the public requires immediate action.

40. Upon receipt of written notice, Pfizer shall provide a good faith written response to the State notification, containing either a statement explaining why Pfizer believes it is in compliance with the Judgment, or a detailed explanation of how the alleged violation occurred and a statement explaining how Pfizer intends to remedy the alleged breach. Nothing in this section shall be interpreted to limit the State of Kansas's investigative subpoena authority to the extent such authority exists under applicable law, and Pfizer reserves all of its rights in responding to an investigative subpoena issued pursuant to such authority.

41. The State may agree, in writing, to provide Pfizer with additional time to extend any of the deadlines listed in this Judgment.

VII. RELEASE

42. Released Claims. By its execution of this Judgment, the State of Kansas releases and forever discharges Pfizer and its past and present officers, directors, employees, representatives, agents, affiliates, parents, subsidiaries, operating companies, predecessors, assigns and successors (collectively, the "Releasees") from the following: all civil causes of action, claims, damages, restitution, disgorgement, fines, costs, attorney's fees, or penalties that the Kansas Attorney General has asserted or could have asserted against Releasees under the Kansas Consumer Protection Act, or any amendments thereto, or by common law claims concerning deceptive or fraudulent trade practices, that the Kansas Attorney General has the authority to release resulting from the Covered Conduct up to and including the Effective Date.

43. Claims Not Covered. Notwithstanding any term in this Judgment, specifically reserved and excluded from the release in Paragraph 42 as to any entity or person, including Releasees, are any and all of the following:

- a. Any criminal liability that any person or entity, including Releasees, has or may have to the State of Kansas;
- b. Any civil or administrative liability that any person and/or entity, including Releasees, has or may have to the State of Kansas not expressly covered by the release in Paragraph 42, including, but not limited to, any and all of the following claims:
 - i. State of federal antitrust violations;
 - ii. Claims involving “best price,” “average wholesale price,” “wholesale acquisition cost,” or any reporting practices;
 - iii. Medicaid claims, including but not limited to federal Medicaid drug rebate statute violations, Medicaid fraud or abuse (whether common law, statutory or otherwise), and/or kickback violations related to State’s Medicaid program;
 - iv. State false claims violations; and
 - v. Claims to enforce the terms and conditions of this Judgment.
- c. Actions of, or on behalf of, state program payors of the State of Kansas arising from the purchase of Estring®, Quillivant®, and Flector Patch®.
- d. Any claims individual consumers have or may have under the Kansas Consumer Protection Act or related laws against any person or entity, including the Releasees.

44. Nothing contained in this Judgment shall relieve Pfizer of the obligations it maintains under any other Judgment or agreement relating to any Pfizer product.

VIII. ADDITIONAL PROVISIONS

45. Nothing this this Judgment shall be construed to authorize or require any action by Pfizer in violation of applicable federal, state or other laws.

46. Modification. The Judgment may be modified by a stipulation of the Parties as approved by the Court or by court proceedings resulting in a modified judgment of the Court.

47. Pfizer shall not cause or encourage third parties, nor knowingly permit third parties acting on its behalf, to engage in the practices from which Pfizer is prohibited by this Judgment.

48. No Approval by the State. The acceptance of this Judgment by the State of Kansas shall not be deemed approval by the State of Kansas of any Pfizer's marketing or business practices. Further neither Pfizer nor anyone acting on its behalf shall state or imply, or cause to be stated or implied that the State of Kansas or any other governmental unit of Kansas has approved, sanctioned or authorized any practices, act, advertisement, coupon or conduct of Pfizer.

49. Strict Performance. Any failure by any party to this Judgment to insist upon strict performance by any other party of any of the provisions of this Judgment shall not be deemed a waiver of any of the provisions of this Judgment, and such party, notwithstanding such failure, shall have the right thereafter to insist upon a specific performance of any and all of the provisions of this Judgment.

50. Entire Agreement. This Judgment represents the full and complete terms of the settlement entered into by the parties hereto. In any action undertaken by the parties, no prior versions of this Judgment and no prior versions of any of its terms that were not entered by the Court in this Judgment, may be introduced for any purpose whatsoever.

51. Jurisdiction. This Court retains jurisdiction of this Judgment and the parties hereto for the purpose of enforcing and modifying this Judgment and for the purpose of granting such additional relief as may be necessary and appropriate.

52. Counterparts. This Judgment may be executed in counterparts and a pdf signature shall be deemed to be, and shall have the same force and effect as, and original signature.

53. Notices. All Notices under this Judgment shall be provided to the following via email and United States Postal Service First-Class Mail:

Defendant:

Markus Green
Vice President
Assistant General Counsel
Pfizer Inc.
235 East 42nd Street
New York, NY 10017
E-mail: markus.green@pfizer.com
Telephone: 212-733-3966

Copy to Pfizer's Counsel:

Andrew Hoffman II
DLA Piper
2000 Avenue of the Stars
Suite 400 North Tower
Los Angeles, CA 90067-4704
E-mail: andrew.hoffman@dlapiper.com
Telephone: 310-595-3010

State of Kansas

Christopher Teters
Assistant Attorney General
Office of the Kansas Attorney General
120 SW 10th Ave.
Fl. 2,
Topeka, Kansas 66612
E-mail: chris.teters@ag.ks.gov
Telephone: 785-296-3751

54. To the extent that any provision of this Judgment obligates Pfizer to change any policy(ies) or procedure(s) and to the extent not already accomplished, Pfizer shall implement the policy(ies) or procedures(s) as soon as reasonably practicable, but no later than 120 days after the Effective Date of this Judgment.

APPROVAL BY COURT

APPROVED FOR FILING and SO ORDERED.

THIS ORDER IS EFFECTIVE AS OF THE DATE AND TIME SHOWN ON THE ELECTRONIC FILE STAMP.

Respectfully submitted,

For Plaintiff State of Kansas

/s/Derek Schmidt
Derek Schmidt, #17781
Kansas Attorney General

Date: 5/20/2022

/s/Christopher Teters
Christopher Teters
Assistant Attorney General
Office of the Kansas Attorney General
120 SW 10th Ave.
Fl. 2,
Topeka, Kansas 66612

Date: 5/20/2022

Approved:

For Defendant Pfizer Inc.



Date: May 18, 2022

Markus Green
Vice President
Assistant General Counsel
Pfizer Inc.
235 East 42nd Street
New York, NY 10017

Local Counsel for Pfizer Inc.



Date: May 18, 2022

Denise F. Fields, # 23561
Fields & Brown, LLC
300 E. 39th Street, Suite LL1F
Kansas City, MO 64111

Exhibit A

[Insert Kansas Attorney General Letter Head]

[Date]

Greetings,

Earlier this year my office settled with Pfizer Inc. (“Pfizer”) concerning its use of certain copayment coupon cards for Estrin, Quillivant XR, Quillichew ER, and Flector Patch. The enclosed check reflects what you are entitled to receive pursuant to that settlement in connection with your use of such coupons. Please cash or deposit this check promptly. **If you do not deposit the check within 180 days from the date of issue printed on the check, it will be canceled.**

If you have any questions about this check, you may call the Attorney’s General’s Consumer Protection Division at [insert number] between the hours of [insert time], Monday through Friday.

Sincerely,

[insert signature block]